UNITED STATES DISTRICT COURT EASTERN DISTRICT OF CALIFORNIA

TRACY TAYLOR,) Case No.: 1:10-cv-00404-LJO-BAM PC
Plaintiff, v.) ORDER GRANTING DEFENDANTS' MOTION) TO MODIFY THE SCHEDULING ORDER
SUSAN HUBBARD, et al.,) (ECF No. 109)
Defendants.))
	,)

Plaintiff Tracy Taylor ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. On May 14, 2013, Defendants filed the instant motion to modify the scheduling order. Defendants request that the Court vacate the current deadline of May 27, 2013, for the filing of dispositive motions, and extend the deadline, as necessary, for 60 days after the Court rules on Defendants' pending motion to dismiss. (ECF No. 109.) Given the nature of the request, it is unnecessary to await a response from Plaintiff and the Court deems the motion submitted.

A scheduling may be modified only for good cause and with the court's consent. Fed. R. Civ. P. 16(b). Good cause requires a showing of due diligence. <u>Johnson v. Mammoth Recreations, Inc.</u>, 975 F.2d 604, 609 (9th Cir. 1992). If the party seeking to amend the scheduling order fails to show due diligence, then the inquiry should end and the court should not grant the motion to modify. <u>Zivkovic v. Southern California Edison</u>, Co., 302 F.3d 1080, 1087 (9th Cir. 2002).

In this case, Defendants indicate that they have been diligent in litigating this case and the parties have completed all discovery, including written discovery and deposition of the Plaintiff. The only remaining pretrial deadline in this action is the filing of dispositive motions no later than May 27, 2013. (ECF No. 60.) Defendants contend that this deadline should be continued until after the Court has ruled on Defendants' pending motion to dismiss. Defendants explain that a ruling on the motion to dismiss will define the scope of any motion for summary judgment and will preserve time, money and judicial resources.

Good cause appearing, IT IS HEREBY ORDERED as follows:

Defendants' motion to extend the dispositive motion deadline an additional sixty (60) days after the Court's ruling on the pending motion to dismiss is GRANTED.

IT IS SO ORDERED.

Dated: May 15, 2013 /s/Barbara A. McAuliff
UNITED STATES MAGISTRATE JUDGE